

HOUSE BILL 3452

By Watson

AN ACT to amend Tennessee Code Annotated, Title 17,  
Chapter 4, Part 1, relative to judicial selection.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 17-4-109, is amended by deleting the section in its entirety and by substituting instead the following:

(a)

(1) If a vacancy occurs during the term of office of a judge of the court of appeals or the court of criminal appeals, then the judicial selection commission shall, at the earliest practicable date, hold a public meeting in the grand division from which the vacancy is to be filled. However, if an incumbent judge fails to file a written declaration of candidacy required by §17-4-114 or §17-4-115, or if the commission is reliably informed that a vacancy is impending for another reason, then the public meeting may be held prior to the actual occurrence of the vacancy.

(2) If a vacancy occurs during the term of office of a judge of the supreme court, then the judicial selection commission shall, at the earliest practicable date, hold a public meeting in Nashville. However, if an incumbent judge fails to file a written declaration of candidacy as required by §17-4-114 or §17-4-115, or if the commission is reliably informed that a vacancy is impending for another reason, then the public meeting may be held prior to the actual occurrence of the vacancy.

(b) Notice of the time, place and purpose of the meeting shall be given by newspapers, radio news and television news and by such other means as the commission deems proper.

(c) Any citizen, attorney or non-attorney, shall be entitled to attend the meeting and express orally or in writing the citizen's approval of or objections to any applicant for the judicial vacancy. Any licensed attorney may appear and make a statement, oral or written, in support of the attorney's own application for the judicial vacancy.

(d) After one (1) public hearing, the commission may hold such additional interviews with the applicants as it deems necessary. The commission shall make independent investigation and inquiry to determine the qualifications of each applicant for the judicial vacancy and shall endeavor to encourage qualified attorneys to apply for and to accept and agree to serve if appointed to fill the judicial vacancy. All hearings, interviews, meetings and deliberations of the commission shall be conducted publicly and shall comply with title 8, chapter 44, part 1; provided however, that, when rating applicants, commission members shall vote anonymously by written ballots, but the ballots shall be collected, announced and tallied at the meeting by the presiding officer. The Tennessee bureau of investigation Level II security clearance as to applicants shall be performed exclusively at the direction of the governor, acting pursuant to §17-4-112(a)(2).

(e) As soon as practicable, but no later than sixty (60) days following receipt of written notice from the governor that a vacancy has occurred, and acting in accordance with rating criteria adopted by the commission, the commission shall, with the assent of a majority of all the members to which it is entitled under §17-4-102(a), assign a rating of "highly qualified," "qualified" or "not qualified" for each applicant for the judicial vacancy. Immediately upon assigning ratings to the list of applicants, the commission shall certify

and transmit to the governor the list of applicants and their respective ratings. However, the list of certified applicants forwarded to the governor must include no fewer than three (3) applicants who are certified as "highly qualified" or "qualified". If an incumbent judge fails to file a written declaration of candidacy as required by §17-4-114 or §17-4-115, or if the commission is reliably informed that a vacancy is impending for any other reason, then the commission may meet, rate the applicants and certify the list of applicants and their respective ratings to the governor prior to actual receipt of written notice from the governor that a vacancy has occurred.

(f) The judicial selection commission, in rating applicants for a supreme court position, shall ensure that the requirements of article VI, § 2, of the Tennessee Constitution are satisfied.

SECTION 2. Tennessee Code Annotated, Section 17-4-110, is amended by deleting the section in its entirety and by substituting instead the following:

(a) All applicants to fill a judicial vacancy must be attorneys who are duly licensed to practice law in this state and who are fully qualified under the constitution and statutes of this state to fill the office for which they are applying.

(b) A candidate who has been defeated in any election held under this chapter is not eligible to apply for the office for which the candidate was defeated until after one (1) regular August election has occurred.

SECTION 3. Tennessee Code Annotated, Section 17-4-111, is amended by deleting the section in its entirety and by substituting instead the following:

A member of the judicial selection commission is not eligible to apply for a judicial vacancy during the member's tenure and the two-year period immediately following conclusion of the member's service on the commission.

SECTION 4. Tennessee Code Annotated, Section 17-4-112, is amended by deleting the section in its entirety and by substituting instead the following:

(a)

(1) When a vacancy occurs in the office of an appellate court after the effective date of this act, by death, resignation or otherwise, the governor shall fill the vacancy by appointing one (1) applicant to fill the vacancy who is certified by the judicial selection commission as either "highly qualified" or "qualified." If the governor appoints an applicant who is certified as "highly qualified", then no legislative confirmation shall be required; however, if the governor proposes to appoint an applicant who is certified as "qualified", then the applicant shall be ineligible to fill the vacancy until the appointment is confirmed by joint vote of the general assembly. No applicant certified by the judicial selection commission as "not qualified" shall be eligible to fill the vacancy.

(2) After receiving the commission's certified list of applicants, but prior to making or proposing an appointment pursuant to subdivision (a)(1), the governor shall direct the Tennessee bureau of investigation or other appropriate agencies to perform appropriate financial and criminal background investigations and inquiries of the prospective appointees; and the governor shall review and assess the results of the background investigations and inquiries.

(b) The term of a judge who fills a vacancy under this section shall expire on August 31 after the next regular August election occurring more than thirty (30) days after the vacancy occurs.

SECTION 5. Tennessee Code Annotated, Section 17-4-113, is amended by deleting the section in its entirety and by substituting instead the following:

(a) If the judicial selection commission does not furnish the required list of certified applicants to the governor within sixty (60) days after receipt of written notice from the governor that a vacancy has occurred, then the governor may fill the vacancy by proposing the appointment of any person who is duly licensed to practice in this state and who is fully qualified under the constitution and statutes of this state to fill the office; however, the proposed appointee shall be ineligible to fill the vacancy until the appointment is confirmed by joint vote of the general assembly.

(b) The term of a judge appointed under this section shall expire on August 31 after the next regular August election occurring more than thirty (30) days after the vacancy occurs.

SECTION 6. Tennessee Code Annotated, Section 17-4-119, is amended by deleting the section in its entirety and by substituting instead the following:

The judicial selection commission and the judicial performance evaluation commission are the successors to the judicial nominating commission and the judicial evaluation commission, respectively. All rules, procedures, records, reports, functions and duties carried out by the prior commissions are transferred to the successor entities. The provisions of this act shall not be construed to abbreviate the term of any member serving on the judicial nominating commission or the judicial performance evaluation commission on the effective date of this act.

SECTION 7. The remaining sections of Tennessee Code Annotated, Title 17, Chapter 4, Part 1, are amended by deleting the language "nominating commission" and by substituting instead the following:

selection commission

SECTION 8. This act shall take effect July 1, 2012, the public welfare requiring it.